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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DEMETRIUS TRE WILLIAMS,)

10 Petitioner,)

11 v.)

12 WASHINGTON STATE)
13 PENITENTIARY,)

14 Respondent.)
15

CASE NO. C08-1488-JCC-BAT

REPORT AND RECOMMENDATION

16 On October 7, 2008, petitioner submitted to this Court for review a petition for writ of habeas
17 corpus under 28 U.S.C. § 2254. In his petition, petitioner identified the conviction under attack as a
18 May 2004 Snohomish County Superior Court conviction for which a sentence of 43 months was
19 imposed. After reviewing the petition, this Court determined that the petition was deficient because
20 petitioner had not demonstrated that he was “in custody” for purposes of the conviction he sought to
21 challenge and because petitioner had not named a proper respondent. Thus, on October 27, 2008,
22 this Court issued an order declining to serve petitioner’s federal habeas petition and granting him
23 leave to amend his petition to correct the specified deficiencies. Petitioner was given thirty days to
24 file any amended petition.

1 On November 6, 2008, petitioner submitted an amended federal habeas petition to the Court
2 for review. In his amended petition, petitioner again identifies the conviction under attack as his May
3 2004 Snohomish County Superior Court conviction. And, again, petitioner makes no showing that he
4 is "in custody" for purposes of challenging that conviction.¹


5 As the Court explained to petitioner in its prior order, a writ of habeas corpus may issue only
6 upon a finding that a prisoner is "in custody in violation of the Constitution or laws or treaties of the
7 United States." 28 U.S.C. § 2241(c)(3). The United States Supreme Court has interpreted this
8 statutory language as requiring that a federal habeas petitioner be "in custody" under the conviction
9 or sentence under attack at the time the petition is filed. *Maleng v. Cook*, 490 U.S. 488, 490-491
10 (1989). Once a petitioner's sentence has fully expired, he is precluded from challenging that
11 sentence because he is no longer "in custody" for purposes of federal habeas review. *Id.*; *Brock v.*
12 *Weston*, 31 F.3d 887, 889-90 (9th Cir. 1994). It appears from the record before this Court that
13 petitioner's sentence on the conviction which he seeks to challenge in this federal habeas proceeding
14 has expired. Petitioner offers no information in his amended habeas petition which suggests to the
15 contrary.
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17 As petitioner is apparently no longer in custody on the conviction which he seeks to challenge
18 in this federal habeas proceeding, his claims are not eligible for review here. Accordingly, this Court
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21 ¹ Petitioner also fails to identify a proper respondent in his amended petition. The Court
22 advised petitioner in its prior order that a petitioner for habeas corpus relief must name the state
23 officer having custody of him as the respondent to the petition. *Rumsfeld v. Padilla*, 542 U.S. 426
24 (2004); *Stanley v. California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). The Court further
25 advised petitioner that this person typically is the warden of the facility in which the petitioner is
26 incarcerated. *Ortiz-Sandoval v. Gomez*, 81 F.3d 891 (9th Cir. 1996). Despite this guidance, petitioner
identified the facility at which he is incarcerated rather than the warden of the facility as the
respondent in his amended petition.

1 recommends that petitioner's amended federal habeas petition be dismissed with prejudice. A
2 proposed order accompanies this Report and Recommendation.

3 DATED this 1st day of December, 2008.
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7 BRIAN A. TSUCHIDA
United States Magistrate Judge
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